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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 835

BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioner,*

v.

CHARLES V. SMITH, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN GENERAL COMMITTEE OF ADJUSTMENT FOR THE BALTIMORE AND OHIO RAILROAD and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GERHARD VAN ARKEL
HENRY KAISER
Van Arkel & Kaiser
1701 K St. N. W.

J. A. CULBERTSON
905 First National Bank Bldg.
Cincinnati 2, Ohio

Counsel for Petitioner.

WAYLAND K. SULLIVAN
Assistant General Counsel
Brotherhood of Railroad Trainmen.
Cleveland 13, Ohio
Counsel for Petitioner

INDEX

	Page
Citation to opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement of the case	3
Reasons for granting the writ	7
Conclusion	13
Appendix A (District Court opinion)	1a
Appendix B (Court of Appeals opinion)	8a
Appendix C (Statutory provisions)	17a

CITATIONS

CASES:

Alabaugh v. *Baltimore and Ohio R. R.*, 222 F. 2d 861, (1955) cert. den. 350 U. S. 839 ..... 7, 8, 12

Aluminum Workers International Union, 112 NLRB 619; *NLRB* v. *Aluminum Workers*, 230 F. 2d 517 (CA 7, 1956) 13

Association of Westinghouse Salaried Employees v. *Westinghouse Electric Corporation*, 348 U.S. 437 (1954) 11

Brotherhood of Railway Trainmen v. *Howard*, 343 U.S. 768 8

Brubaker v. *Baltimore and Ohio Railroad*, No. 34172, USDC, N. D. Ohio 12

Chapman et al. v. *Long Island Railroad et al.*, No. 3277, USDC, S. D. N. Y. 12

Conley v. *Gibson*, — U.S. —, 78 S. Ct. 99 (1957) 8

Decker et al. v. *Baltimore and Ohio Railroad et al.*, No. 10136, USDC, Md. 12

Ford Motor Co. v. *Huffman*, 345 U.S. 330 8

General Committee of Locomotive Engineers v. *Missouri, K & T R. R.*, 320 U.S. 323 8

Page

General Committee of Locomotive Engineers v. *Southern Pacific*, 320 U.S. 338 8
Hostettler et al. v. *Brotherhood of Railroad Trainmen et al.*, No. 9795, USDC Md. 12
International Association of Machinists v. *NLRB*, 247 F. 2d 414 (1957) 13
Johns v. *Baltimore and Ohio R.R.*, 118 F. Supp., aff'd 347 U.S. 964 7
Lathan v. *Baltimore and Ohio Railroad et al.*, No. 7050, USDC W. D. N. Y. 12
Miller v. *Gilliece*, 234 F. 2d 658 7
NLRB v. *Technicolor Motion Picture Corp. et al.*, 248 F. 2d 348 13
McNamar v. *B. & O. Chicago Terminal Co.*, 153 F. Supp. 835 12
Order of Railway Conductors v. *Pitney*, 326 U.S. 561 8
Order of Railway Conductors v. *Southern Railway Co.*, 339 U.S. 255 8
Pennsylvania Railroad Co. v. *Rychlik*, 352 U.S. 480 ..... 9, 10, 12
Pigott v. *Detroit, Toledo and Ironton Railroad Co.*, 221 F. 2d 736, cert. den. 350 U.S. 833 7
Rychlik v. *BRT*, 128 F. Supp. 449 12
Rychlik v. *Pennsylvania R.R.*, 229 F. 2d 171 7
Sampsell v. *Baltimore and Ohio R. R.*, (C.A. 4, 1956) 235 F. 2d 569, Cert. den., 352 U.S. 941 7
Shiels et al. v. *Baltimore and Ohio R. R.*, No. 12172, U.S.C.A. 7 12
Shiels et al. v. *Baltimore and Ohio R. R.*, 154 F. Supp. 917 12
Slocum v. *Delaware L. & W. R. R.*, 339 U.S. 239 8
Steele v. *Louisville and Nashville R. R.*, 323 U.S. 192 8
Tunstall v. *Brotherhood*, 323 U.S. 210 8
United Railroad Operating Crafts v. *Northern Pacific Railroad Co.*, 208 F. 2d 135, cert. den. 347 U.S. 929 7
United Railroad Operating Crafts v. *Pennsylvania R. R.*, 212 F. 2d 938 7
United Railroad Operating Crafts v. *Wyer*, 205 F. 2d 153 (1953 aff'g. 115 F. Supp. 359), cert. den. 347 U.S. 929 7

Page

Walsh v. *Pennsylvania Railroad and Brotherhood of Locomotive Engineers*, No. 962 U.S.D.C., S. D. N. Y. 12
Whitehouse v. *Illinois Central R. R. Co.*, 349 U.S. 366 11

STATUTES:
28 U.S.C. § 1254(1) 2
Railway Labor Act, 45 U.S.C. §§ 152, 153 .....19a-23a
Taft-Hartley Act, 29 U.S.C. § 158(a)(3), (b)(2) .17a-19a

LEGISLATIVE HISTORY:
Senate Report No. 2262, 81st Cong. 2d Sess. 13
Hearings, Subcommittee of Senate Committee on Labor and Public Welfare, 81st Cong. 2d Sess. 13
Hearings, House Committee on Interstate and Foreign Commerce, 81st Cong. 2d Sess..... 13

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No.

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v.

CHARLES V. SMITH, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN GENERAL COMMITTEE OF ADJUSTMENT FOR THE BALTIMORE AND OHIO RAILROAD and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on January 2, 1958.

CITATION TO OPINIONS BELOW

The opinion of the District Court, printed as Appendix A hereto (*infra*, p. 1a) is reported at 144 F. Supp. 869. The opinion of the Court of Appeals, printed as Appendix B hereto (*infra*, p. 8a) is reported at — F. 2d —.

JURISDICTION

The judgment of the Court of Appeals was entered on January 2, 1958. This petition for a writ of certiorari was filed on March [illegible], 1958, less than 90 days after entry of the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Does a District Court of the United States have jurisdiction to restrain the threatened discharge of a group of employees by a railroad carrier, under a union shop agreement made pursuant to the provisions of Section Eleventh (a) of the Railway Labor Act, where such employees did not exhaust their remedies before the National Railroad Adjustment Board?

2. May a union and a railroad carrier lawfully agree that employees, engaged in trainmen service at the time a union shop agreement was entered into pursuant to Section Eleventh (a) of the Railway Labor Act, who thereafter, while engaged in dual service as trainmen and conductors, fail to maintain membership in any organization national in scope, be discharged from all employment?

3. Does subsequently acquired membership in another organization national in scope excuse a prior default under such a union shop agreement?

STATUTES INVOLVED

Pertinent provisions of the Railway Labor Act, 45 U.S.C. Secs. 152, 153, and of the Labor Management Relations Act, 29 U.S.C. Sec. 158 are set forth in Appendix C to this petition, p. 17a *infra*.

STATEMENT OF THE CASE

On June 15, 1956, the plaintiffs below and the respondents here, Charles V. Smith, an employee of the Baltimore and Ohio Railroad, and the Order of Railway Conductors and Brakemen General Committee of Adjustment for the Baltimore and Ohio Railroad (herein referred to as ORC), filed a complaint in the United States District Court for the Southern District of Ohio, Western Division, against the Baltimore and Ohio Railroad. On July 11, 1956, the Brotherhood of Railroad Trainmen, the petitioner here, (herein referred to as BRT) was allowed to intervene as a party defendant (R. 1a, 6a).

The amended and substituted complaint, filed on July 11, 1956 (R. 7a), alleged that on September 20, 1951, the Railroad, and its employees represented by the BRT, had entered into an agreement, (set forth as an appendix to the complaint (R. 9a, 15a)), pursuant to the provisions of Section Eleventh (a) of the Railway Labor Act (Appendix, p. 21a), providing that employees represented by the BRT "shall, as a condition of their continued employment subject to such agreements, become members of the Brotherhood . . . and thereafter shall maintain membership in the Brotherhood" (Section 1, R. p. 15a). The agreement further provided (Section 5 (c), R. p. 18a) that

> ". . . If the decision (of the Carrier, after hearing) . . . is that the employee has not complied with the terms of this agreement, his employment and seniority in his class or craft shall be terminated within ten (10) calendar days of the date of said decision . . ."

The complaint alleged that the plaintiff Smith held seniority as a conductor from and after August 6, 1944

(Paragraph 5, R. p. 8a); that the ORC is an organization national in scope (paragraph 6); that the plaintiff Smith is a regularly assigned conductor and a member in good standing of the ORC (paragraph 7, R. 9a); that the defendant Railroad had notified Smith that his employment and seniority as a conductor would terminate on June 14, 1956, solely because of his failure to comply with the union shop agreement with the BRT (Paragraph 8); that such discharge would constitute a violation of the Railway Labor Act, and would constitute an illegal deprivation of the right of the plaintiff ORC to represent conductors (Paragraphs 9, 10); that there were other employees similarly situated; and that the plaintiffs had no adequate remedy at law (Paragraphs 10-14). The complaint prayed a temporary and permanent injunction on behalf of the plaintiff and all others similarly situated to restrain the defendant from violating the rights of representation of the ORC and from discharging the plaintiff Smith and others similarly situated (R. 12a).

The Railroad answered, averring that the plaintiff Smith had become a member of the United Railroad Operating Crafts in April, 1952 (R. 26a); that he had ceased to be a member of the BRT on July 1, 1952, for failure to pay dues; that he had been cited for this violation on July 31, 1952; that a hearing thereon was held on September 9, 1952; that on January 6, 1955, he was notified that his employment would be terminated for violation of the agreement; that an appeal hearing was held on February 28, 1955; that because of judicial restraint, no decision was rendered until June 4, 1956, when it was determined that he was in violation of the agreement, and would be discharged on June 14, 1956 (R. 27a). It was alleged on informa-

tion and belief that Smith became a member of the ORC on April 1, 1956 (R. 26a). The answer averred that twenty others were similarly situated to Smith (R. 26a). It denied that the proposed discharges constituted violations of the Railway Labor Act (R. 28a); prayed that the court declare whether the rights of the ORC had been violated by the intended termination of employment (R. 33a); and asserted that the National Railroad Adjustment Board had exclusive primary jurisdiction of the controversy (R. 34a).

The BRT moved to dismiss on the ground that the court lacked jurisdiction (R. 35a), which motion was overruled (R. 36a). The BRT then answered, (R. 37a-43a), raising substantially the same defenses as the Railroad.

In the course of a hearing on September 6, 1956, the parties entered into a stipulation (R. 71a-76a) by which it was agreed that the ORC and the BRT are railroad labor organizations national in scope (R. 7?a-74a); that Smith had been employed by the railroad since 1929; that since August 6, 1944, he had "from time to time" served as a conductor; that on July 1, 1952, "plaintiff ceased to be a member of the BRT on account of failure to pay dues and was not at that time a member of any railroad organization qualified as 'national in scope' "; that he remained a nonmember until after he was cited on July 28, 1952 for violation of the agreement; and that he had joined the ORC on April 1, 1956 (R. 72a, 73a).

The District Court entered Findings of Fact and Conclusions of Law (R. 44a-50a), granting the relief sought (R. 5a), the judgment providing that "Nothing herein shall be construed as in any manner enjoining

the defendants . . . from terminating the employment and seniority as trainmen of the plaintiff Smith and others similarly situated" (R. 6a). The Court found that the agreement "as interpreted and applied by the parties thereto" was in violation of Section 2, Third, Fourth, Seventh, Ninth and Eleventh of the Railway Labor Act to the extent that it destroyed the employment and seniority rights of the plaintiffs as conductors (R. 43a), and that such termination of employment was "a violation, encroachment and infringement of the rights of the (ORC) to the exclusive representation of conductors . . ." on the Railroad (R. 49a). The court held that the controversy did not involve or require the interpretation of the Union Shop agreement and that the National Railroad Adjustment Board was therefore without jurisdiction (id.). It entered the injunction as prayed (R. 50a).

The BRT alone appealed. The Court of Appeals affirmed the judgment below. It held that "The instant controversy involves employees who have separate job status and separate seniority rights as both conductors and trainmen" (Appendix, p. 12a); that "the issue is whether the BRT Union Shop Agreement is valid if interpreted and carried out by the Railroad and BRT so as to deprive Smith and others similarly situated of their employment as conductors (Appendix, p. 13a); that the National Railroad Adjustment Board had no jurisdiction; that the Congress had not authorized the result sought by the BRT; that ORC has the exclusive right to negotiate with reference to conductors and had not negotiated as to this controversy; that ORC does not have a union shop contract;[1] and that as con-

[1] Though this is not explicitly set forth in the record, we believe it to be a fair inference. (See R. 83a-85a)

strued by the Railroad and the BRT the union shop agreement is plainly invalid. It read the language of Section Eleventh (a)—"as a condition of employment"—as meaning continued employment only in the craft or class covered by the agreement, and not in the employment of the employer.

REASONS FOR GRANTING THE WRIT

1. Insofar as the Court of Appeals held that the National Railroad Adjustment Board lacked exclusive primary jurisdiction, its decision is in conflict with the holding of the Court of Appeals for the Fourth Circuit in *Alabaugh* v. *Baltimore and Ohio R. R.*, 222 F. 2d 861, (1955) cert. den. 350 U. S. 839;[2] for the Second Circuit in *United Railroad Operating Crafts* v. *Wyer*, 205 F. 2d 153 (1953, aff'g 115 F. Supp. 359), cert. den. 347 U. S. 929; of a three-judge court convened in the Seventh Circuit in *Johns* v. *Baltimore and Ohio R. R.*, 118 F. Supp. 317, aff'd 347 U. S. 964; for the Seventh Circuit in *United Railroad Operating Crafts* v. *Pennsylvania R. R.*, 212 F. 2d 938 (1953); and for the Ninth Circuit in *United Railroad Operating Crafts* v. *Northern Pacific Railroad Co.*, 208 F. 2d 135, cert. den. 347 U. S. 929. We believe that it is also in conflict with two decisions by different panels of the Court of Appeals for the Sixth Circuit; *Pigott* v. *Detroit, Toledo and Ironton Railroad Co.*, 221 F. 2d 736, cert. den. 350 U. S. 833 (1955) (Judge Allen, who wrote the opinion below, dissented in *Pigott*, 221 F. 2d at page 742) and *Miller* v. *Gilliece*, 234 F. 2d 658 (1956) (though Chief Judge Simons sat in both that case and this). While these cases largely dealt with the issue whether the

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[2] See *Sampsell* v. *Baltimore and Ohio R. R.*, (C.A. 4, 1956) 235 F. 2d 569, Cert. den., 352 U.S. 941. See also *Rychlik* v. *Pennsylvania R. R.*, 229 F. 2d 171.

United Railroad Operating Crafts was or was not an organization "national in scope", this is but one application of the general rule that controversies involving Section Eleventh (a) of the Railway Labor Act are to be determined in the first instance by the National Railroad Adjustment Board.[3]

Contrary to the holding of the Court below that "The issue is not the meaning of the agreement . . ." (Appendix, p. 13a), this is precisely the question. Section 5 (c) of the agreement, cited *supra* p. 3 (R. p. 18a), states that, if it is decided that an employee has not complied with such a union shop agreement, "his employment and seniority in his class or craft shall be terminated". The Railroad and the BRT read this to mean "in his class(es) or craft(s)", where an employee had dual status at the time the agreement was made, as Smith had (R. 46a, 72a, 73a, 88a, 91a). The issue here is whether the undisputed

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[3] The courts so holding have relied on *General Committee of Locomotive Engineers* v. *Missouri, K & T R. R.*, 320 U.S. 323; *General Committee of Locomotive Engineers* v. *Southern Pacific*, 320 U.S. 338; *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561; *Slocum* v. *Delaware L. & W. R. R.*, 339 U.S. 239; *Order of Railway Conductors* v. *Southern Railway Co.*, 339 U.S. 255. The cases relied on by respondents (*Steele* v. *Louisville and Nashville R. R.*, 323 US. 192; *Tunstall* v. *Brotherhood*, 323 U.S. 210; and *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768, see *Conley* v. *Gibson*, —— U.S. ——, 78 S. Ct. 99 (1957) have been distinguished on the ground that they involve "racial discrimination, as to which the courts were well qualified to grant relief and which involved none of the matters of collective bargaining which the Adjustment Board was set up to handle" *Alabaugh* v. *Baltimore and Ohio Railroad*, *supra*, at page 866. The discrimination, if any, here involved, is not, as in *Steele*, *supra*, (at page 203) "irrelevant and invidious". As in *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, the rules here applied are "within the reasonable bounds of relevancy" (at page 342).

violation of the agreement by the plaintiff Smith appropriately calls for the termination of all his employment with the Railroad, or merely his employment as a trainman. This is precisely the type of problem which should, in the first instance, be submitted to the National Railroad Adjustment Board.[4] That an interpretation of the agreement is involved appears from the stipulation executed by the plaintiffs which in Paragraph 9, states that "Said union shop agreement has been *interpreted* by the defendant railroad and by the BRT to require that . . ." (R. 75a) (emphasis supplied). The Court below itself found that "*As so construed* the Union Shop agreement is invalid" (Appendix, p. 17a, (emphasis supplied).

In considering the merits of the dispute, the National Railroad Adjustment Board would have before it the facts that disciplinary action against Smith, pursuant to the agreement, had been delayed for approximately one and a half years because of an action brought in the Indiana courts (R. 54a, 74a, 86a), which period he used to acquire sufficient seniority to become a regular conductor (R. 72a, 73a); that the seniority which had enabled him to become an extra conductor and a regular conductor was acquired by virtue of his employment under the BRT agreement (R. 101a); that his retention as a regular conductor may operate to prevent the promotion of a BRT member who had throughout this period complied with the provisions of the agreement; and the entire complex of problems involved in weighing the interest in obtaining compliance with union shop agreements with fairness to employees

[4] Since the ORC is equally represented on that Board (R. 75a), the problem of fair hearing presented in *Pennsylvania Railroad Co.* v. *Rychlik*, 352 U.S. 480, is not present.

covered thereby. The Adjustment Board might well read the language of Section 5(c) of the agreement as "his employment, and his seniority in his craft or class, shall be terminated . . .". This would be consistent with the probable intention of the parties that one discharged for violation of the agreement would, upon rehire, be treated as a new employee.[8]

2. The decision of the Court of Appeals is contrary to the holding of this Court in *Pennsylvania Railroad Co.* v. *Rychlik*, 352 U. S. 480. It was there pointed out that Section Eleventh (a) did not confer on railroad employees "union shopping" rights (at page 492, fn. 29). Under the holding of that case, the plaintiff Smith was required to be a member of the BRT within sixty days of the time the union shop agreement was executed, and to retain such membership thereafter. Un-

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[8] While the agreement, in Section 8, provides that "The procedure provided for in this Section 8 shall be the sole and exclusive method for determining disputes under this agreement" (R. 20a), the Court of Appeals for the Fourth Circuit, dealing with an identical agreement, properly observed (*Alabaugh* v. *Baltimore and Ohio Railroad*, *supra*, at page 866) that

> "it is perfectly clear that the provision for the procedure prescribed by the agreement is in no sense the creation of a System Board of Adjustment . . .; and in none of the cases cited, in which the same union shop agreement was involved, does it seem to have been thought that the jurisdiction of the (National Railroad Adjustment) Board was in anywise affected by the provision. Furthermore, the provision of the agreement referred to relates to disputes between the Brotherhood and the carrier, and not to grievances of the employees against the carrier."

If the clause be held to provide a literal finality, it would of course preclude review of carrier action by the courts as well as the Adjustment Board.

doubtedly, under the final proviso to Section Eleventh (c), he had the right to "chang(e) membership from one organization to another organization admitting to membership employees of a craft or class in any of said services". But it is undisputed here that his membership in the BRT terminated on July 1, 1952, and that he did not acquire membership in the ORC or any other organization national in scope until April 1, 1956. This is not "changing membership" within the meaning of the proviso; and the Act provides no other means for escaping the obligation of a union shop agreement. The agreement, as interpreted by the parties, is therefore entirely consistent with the statutory scheme.

It is not correct to say, as the Court below did, that the BRT "ignores the further fact that ORC has the exclusive right to negotiate with reference to conductors and has not negotiated as to this controversy" (Appendix, p. 17a). The action of the Railroad and BRT in no way derogates from any rights of the ORC, which will continue to be, as it has been in the past, the sole and exclusive representative of the craft and class of conductors.[6] It is not necessary to reach the troublesome problems of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437 (1954), or to determine whether

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[6] We do not understand the position taken by the Railroad defendant in its answer (R. p. 25a) that "the rights claimed by the plaintiff organization (ORC) are not within the jurisdiction of the National Railroad Adjustment Board". Section First, (i) (Appendix, p. 23a) provides that disputes "between an employee or group of employees and a carrier. . ." may be submitted to the Board. See, *inter alia*, *Whitehouse* v. *Illinois Central R. R. Co.*, 349 U.S. 366. The plaintiff ORC has not claimed that it could not invoke the services of the Board.

Smith's rights were "uniquely personal" (page 461), for the ORC accepted Smith's membership subject to the known and existing infirmity in his contract of employment, a defect which had matured, upon which action was suspended only because of judicial restraint. The holding of the Court below is that the interest of the BRT in full enforcement of its agreement was extinguished by Smith's adherence to ORC, in derogation of the statutory right of the BRT to be the exclusive representative of its craft.

In *Rychlik*, this Court did not rule on the question whether after-acquired membership in another organization, national in scope excuses a prior default, noting (at page 484, fn. 9) that,

> "Neither in the Court of Appeals, nor here, has Rychlik claimed that his membership in the Switchmen's Union made his discharge illegal. In both cases he stood only on his membership in UROC."

This problem has given rise to much litigation,[1] and

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[1] The following cases raising this issue are presently pending: *Walsh* v. *Pennsylvania Railroad and Brotherhood of Locomotive Engineers*, No. 962 USDC, S. D. N. Y.; *Chapman et al.* v. *Long Island Railroad et al.*, No. 3277 USDC, S. D. N. Y.; *Brubaker* v. *Baltimore and Ohio Railroad*, No. 34172 USDC, N. D. Ohio; *Lathan* v. *Baltimore and Ohio Railroad et al.*, No. 7050 USDC, W. D. N. Y.; *Hostettler et al.* v. *Brotherhood of Railroad Trainmen et al.*, No. 9795 USDC, Md.; *Decker et al.* v. *Baltimore and Ohio Railroad and Brotherhood of Railroad Trainmen*, No. 10136, USDC, Md.; *Shiels et al.* v. *Baltimore and Ohio Railroad et al.*, No. 12172, USCA 7 (see opinion below at 154 F. Supp. 917). See also *Alabaugh* v. *Baltimore and Ohio Railroad et al.*, 222 F. 2d 861, at page 863; 125 F. Supp. 401 at 410 (attempted reaffiliation after default), *Shiels et al.* v. *Baltimore and Ohio R. R.*, 154 F. Supp. 917 at 921; *Rychlik* v. *BRT*, 128 F. Supp. 449, at 456; *McNamar* v. *B & O Chicago Terminal Co.*, 153 F. Supp. 835.

should be authoritatively decided, either on the merits, or by a holding that the National Railroad Adjustment Board has exclusive primary jurisdiction.[8]

The problem is an important one in the administration of the Railway Labor Act. As the many cases already filed show, many persons who failed to retain membership in an organization national in scope have sought to excuse their default by later joining the same, or another, organization national in scope. Since this question has not been authoritatively resolved, the administration of union shop agreements, and the

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[8] The National Labor Relations Board has taken the broad position that a belated tender of dues or initiation fees under a union shop agreement cures a previous default; *re Aluminum Workers International Union*, 112 NLRB 619, at 621 (1955), *NLRB* v. *Aluminum Workers*, 230 F. 2d 515 (CA 7, 1956). The broad rule adopted by the NLRB was rejected by the Second Court of Appeals in *International Association of Machinists* v. *NLRB*, 247 F. 2d 414 (1957) and the Ninth Court of Appeals in *NLRB* v. *Technicolor Motion Picture Corp et al.*, 248 F. 2d 348 (1957). In the *IAM* case, the Second Court of Appeals, at page 420, and in the *Technicolor* case, the Ninth Court of Appeals, at page 354, pointed to the industrial instability which would necessarily follow if the rule laid down by the NLRB were adopted. While Section Eleventh (a) is "substantially the same" as the 1947 union shop amendments to the NLRA (S. Rep. No. 2262, 81st Cong. 2nd Sess. p. 3, U. S. Code Cong. Serv. 81st Cong. 2nd Sess. 1950. V. 2, pp. 4319, 4321), these cases deal with different statutory language, with a different legislative background in non-railroad industries. cf. Sections 8 (a) (3) and 8 (b) (2) of the Labor Management Relations Act (Appendix, p. 17a) (Act of June 23, 1947, c. 120, Title 1, Sec. 101, 61 Stat. 140; 29 U. S. C. A. sec. 158) with Section Eleventh (a) (Appendix, p. 21a); and see, as to the legislative history of Section Eleventh (a) on this matter, Hearings, Subcommittee of Senate Committee on Labor and Public Welfare, 81st Cong. 2d Sess., p. 23, on S. 3295; Hearings, House Comm. on Interstate and Foreign Commerce, 81st Cong. 2d Sess., p. 24 on H. R. 7789. It is therefore the more appropriate that a similar problem in the railroad field should be first considered by the Adjustment Board.

rights of unions and employees thereunder, are uncertain and clouded. Resolution of the controversy would settle many disputes which have arisen, and which may arise, under the Railway Labor Act.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit should be granted.

Respectfully submitted,

GERHARD VAN ARKEL
HENRY KAISER
Van Arkel & Kaiser
1701 K St. N. W.
Washington 6, D. C.

J. A. CULBERTSON
905 First National Bank Bldg.
Cincinnati 2, Ohio

Counsel for Petitioner.

WAYLAND K. SULLIVAN
Assistant General Counsel
Brotherhood of Railroad Trainmen.
Cleveland 13, Ohio
Counsel for Petitioner
Brotherhood of Railroad Trainmen.

APPENDIX A

Civ. A. No. 3804

CHARLES V. SMITH, and Order of Railway Conductors and Brakemen General Committee of Adjustment for the Baltimore and Ohio Railroad, *Plaintiffs*,

v.

The BALTIMORE AND OHIO RAILROAD COMPANY, A Maryland corporation, *Defendant*,

and

BROTHERHOOD OF RAILROAD TRAINMEN, *Intervenor-Defendant*.

United States District Court, S. D. Ohio, W. D. Oct. 3, 1956.

DRUFFEL, District Judge.

1. The plaintiff, Charles V. Smith, is a resident of Hamilton County, Ohio, and is a citizen of the State of Ohio.

2. The plaintiff, Order of Railway Conductors and Brakemen General Committee of Adjustment for The Baltimore and Ohio Railroad (hereinafter called "the Conductors"), is a voluntary, unincorporated association with its principal place of business located in Cincinnati, Hamilton County, Ohio.

3. The defendant, The Baltimore and Ohio Railroad Company (hereinafter called "the B. & O."), is a Maryland corporation authorized to do business in Ohio, and is a common carrier within the provisions of the Railway Labor Act, as amended, 45 U.S.C.A. § 151 et seq.

4. The intervenor-defendant, Brotherhood of Railroad Trainmen (hereinafter called "the Trainmen"), is a voluntary, unincorporated association with its principal place of business located at Cleveland, Cuyahoga County, Ohio.

5. This is an action for injunction brought by the Conductors and by Charles V. Smith for himself and others similarly situated against the B. & O. The Trainmen intervened as a party defendant. The amount in controversy with respect to the plaintiff Smith and with respect to each of the parties he purports to represent exceeds, exclusive of interest and costs, the sum of $3,000. The action involves and requires a determination of the validity of a union shop agreement negotiated under the provisions of the Railway Labor Act between the B & O. and the Trainmen interpreted and applied by the parties thereto. This court has jurisdiction of the parties to this cause and the subject matter thereof because this is a suit arising under a law of the United States regulating commerce, the Railway Labor Act, Title 45 U.S.C.A. § 151 et seq. and under Section 2201 of the Judicial Code, 28 U.S.C.A. §§ 1337, 2201.

6. The plaintiff Smith is and has been since 1929 an employee of the B. & O. He was promoted to a conductor on August 6, 1944, and holds seniority as a conductor from and after such date. Since June 1, 1956, he has been employed by the B. & O. as a regularly assigned conductor, and since that date his assignments have all been those of a regularly assigned conductor.

7. The Conductors is a labor organization, national in scope, organized in accordance with the provisions of the Railway Labor Act. It has been the exclusive bargaining representative of the class and craft of conductors on the defendant's railroad for many years and is presently certified under date of January 13, 1945, as the bargaining representative of the class and craft of conductors on said railroad, pursuant to Section 2 of the Railway Labor act, 45 U.S.C.A. § 152, and is acting as representative of said class and craft of conductors on the properties of the B. & O. pursuant to a collective bargaining agreement effective September 1, 1927, as amended, providing rates of pay, rules and working conditions for the said class and craft of conductors.

8. The Trainmen is a labor organization, national in scope, organized in accordance with the Railway Labor Act. It has been the exclusive bargaining representative of the class and craft of yard helpers, yard foremen, passenger and freight brakemen and flagmen, and switchtenders (hereinafter collectively called "trainmen"), for many years. Many of the employees heretofore represented by the Trainmen have been promoted to, have worked as and hold seniority as conductors.

9. Acting under the provisions of Section 2, Eleventh, of the Railway Labor Act, as amended, 45 U.S.C.A. § 152, Eleventh, the B. & O. and the Trainmen entered into a Union Shop Agreement dated September 20, 1951, which has been effective since October 1, 1951. A copy of such agreement (hereinafter called "the Trainmen's Union Shop Agreement"), is attached to the Complaint as Exhibit "A".

10. On July 1, 1952, the plaintiff Smith, who had theretofore been a member of the Trainmen, ceased to be a member of that organization on account of failure to pay dues and was not at that time a member of any railroad labor organization "national in scope". He did not become a member of any railroad labor organization "national in scope" until after he was cited on July 28, 1952, for violation of the Trainmen's Union Shop Agreement. He became a member of the Conductors on April 1, 1956, and has remained a member of the Conductors since that date.

11. On July 28, 1952, the Trainmen notified the B. & O. that the plaintiff Smith was in violation of the Trainmen's Union Shop Agreement; plaintiff Smith was cited for this violation by the B. & O. on July 31, 1952; plaintiff Smith requested a hearing of the union shop charge on August 12, 1952; such a hearing was held on September 9, 1952; the decision in the case of plaintiff Smith was rendered on January 6, 1955, when the B. & O. notified him that his employment relationship would be terminated effective

January 17, 1955; that on January 12, 1955, plaintiff Smith requested an appeal hearing, which, pursuant to notice of February 17, 1955, was duly held on February 28, 1955, and, on June 4, 1956, it was determined by the B. & O. that plaintiff Smith was in violation of the Trainmen's Union Shop Agreement between the B. & O. and the Trainmen; and, accordingly, he was notified on that date that his employment relationship with the B. & O. would be terminated June 14, 1956, on account of failure to comply with the terms of the Trainmen's Union Shop Agreement.

12. The 20 other conductors named on the list attached to the Stipulation filed herein are similarly situated to the plaintiff Smith. Each of them was promoted to a conductor with the B. & O. on the date opposite his name under the heading "Seniority" as a conductor from and after said date. The Trainmen notified the B. & O. that each of said 20 conductors was in violation of the Trainmen's Union Shop Agreement on the date set forth opposite his name under the heading "Date Cited". The B. & O. has notified each of the first 9 conductors on the list that because of his failure to comply with the Trainmen's Union Shop Agreement his employment relationship with the B. & O. would cease on the date set forth opposite his name under the heading "Date Dropped". The B. & O. has not as yet terminated the employment relationship of the last 11 conductors on the list but will do so unless restrained by this Court.

13. The Trainmen's Union Shop Agreement has been construed and acted upon by the parties thereto, being the defendants herein, to require that an employee in violation thereof shall be discharged as an employee and thereby deprived of his status and seniority not only as a trainman but also as a conductor, and the Trainmen have demanded that the B. & O., in accordance with the construction of the parties thereto, not only terminate the employment and seniority as trainmen of plaintiff Smith and others simi-

larly situated because of their noncompliance with the said Trainmen's Union Shop Agreement, but that the B. & O. also terminate their employment and seniority as conductors because of such noncompliance; and unless restrained by this court the B. & O. will acquiesce in said demand of the Trainmen and will, because of such noncompliance with the Trainmen's Union Shop Agreement, deprive and continue to deprive the plaintiff Smith and other conductors similarly situated of their employment and seniority as conductors.

14. The plaintiffs do not claim any right or relief with respect to the employment or seniority status of the plaintiff Smith or of others similarly situated as members of the class and craft of trainmen but only with respect to the employment and seniority status of the said individuals as members of the class and craft of conductors.

CONCLUSIONS OF LAW

[1] 1. This action arises under the laws of the United States regulating commerce and more particularly under the railway Labor Act, as amended, Title 45 U.S.C.A. § 151 et seq., and the case is, therefore, within the jurisdiction of the court under Title 28 U.S.C.A. § 1337. Jurisdiction is also founded upon diversity of citizenship under Title 28 U.S.C.A. § 1332. This court has jurisdiction of the subject matter of this action and of the parties thereto.

[2] 2. The action is properly brought as a class action under Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C.A. on behalf of conductors similarly situated to the plaintiff Smith.

[3] 3. The Union Shop Agreement between the B. & O. and the Trainmen as interpreted and applied by the parties thereto is invalid and in violation of the Railway Labor Act, as amended, and particularly Section 2, Third, Fourth, Seventh, Ninth and Eleventh thereof, to the extent that said agreement destroys the employment and seniority

rights of Smith and others similarly situated as conductors and as members of the craft and class of conductors.

4. The termination of the employment and seniority rights as conductors of the plaintiff Smith and others similarly situated because of their noncompliance with the Union Shop Agreement between the Trainmen and the B. & O. Railroad is unlawful under the Railway Labor Act, as amended, and particularly Section 2, Third, Fourth, Seventh, Ninth and Eleventh thereof.

5. The termination of the employment and seniority as conductors of the plaintiff Smith and others similarly situated is a violation, encroachment and infringement of the rights of the Conductors to the exclusive representation of the class and craft of conductors on the B. & O. under the provisions of the Railway Labor Act, as amended, and particularly Section 2, Third, Fourth, Seventh, Ninth and Eleventh thereof.

6. Insofar as such discharges will terminate the employment status and seniority as trainmen of the plaintiff Smith and others similarly situated, the plaintiffs do not seek and are not entitled to relief with respect thereto.

[4] 7. The controversy in this case does not involve or require the interpretation of the Trainmen's Union Shop Agreement inasmuch as there is no dispute between the Trainmen and the B. & O. Railroad, the only parties to the agreement, as to its interpretation or application. The National Railroad Adjustment Board is therefore without jurisdiction and plaintiff and others similarly situated are without an adequate administrative remedy. Unless this court acts, the employment and seniority rights as conductors of Smith and others similarly situated will be terminated and destroyed, and this court has jurisdiction and power to grant injunctive relief.

8. The Conductors, as a railway labor organization, likewise do not have any administrative remedy available to

them under the procedures provided by the Railway Labor Act as the bargaining representative of the class and craft of conductors on the defendant's railroad, which rights the defendants have violated and are threatening to violate, and this court has jurisdiction and power to grant injunctive relief to protect the rights of representation of said organization.

9. Plaintiffs are entitled to a permanent injunction against the B. & O., as prayed for in the Amended and Substituted Complaint, and to a permanent injunction against the Trainmen restraining it from taking any action to require termination by the B. & O., of the employment and seniority as conductors of the plaintiff Smith and those similarly situated.

It is ordered, adjudged and decreed:

1. That the defendants, the Baltimore & Ohio Railroad Company and the Brotherhood of Railroad Trainmen, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with them, be and they are hereby restrained and enjoined from terminating or taking any action to require the termination of the employment status and seniority of the plaintiff Charles V. Smith and all other employees similarly situated as conductors because of their failure to comply with the Union Shop Agreement between the defendants dated September 20, 1951, and are further restrained and enjoined from continuing to deny the employment status and seniority as conductors of any employees similarly situated to said plaintiff Charles V. Smith whose employment status and seniority as conductors has been heretofore terminated because of noncompliance with said Union Shop Agreement.

2. Nothing herein shall be construed as in any manner enjoining the defendants, the Baltimore & Ohio Railroad Company and the Brotherhood of Railroad Trainmen, from terminating the employment and seniority as trainmen of

the plaintiff Smith and other employees similarly situated or as enjoining the defendants from in any way taking any action to compel or require the termination of their employment and seniority as trainmen.

3. The costs of this action are taxed to the defendants.

The defendant, Brotherhood of Railroad Trainmen, excepts.

APPENDIX B

No. 13069

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BROTHERHOOD OF RAILROAD TRAINMEN, *Appellant*,

v.

CHARLES V. SMITH, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN GENERAL COMMITTEE OF ADJUSTMENT FOR THE BALTIMORE AND OHIO RAILROAD and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation, *Appellees*.

Appeal from the United States District Court,
Southern District of Ohio, Western Division

Decided January 2, 1958

Before SIMONS, Chief Judge, ALLEN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. This appeal arises out of an action praying for an injunction against defendant The Baltimore and Ohio Railroad, hereinafter called the Railroad, on behalf of plaintiff Smith and others similarly situated. The case arises out of the following facts which, for the most part, are stipulated:

Smith had been employed as a trainman on the Railroad since 1929, and was a member of the Brotherhood of Rail-

road Trainmen, a voluntary labor association, hereinafter called BRT. Pursuant to the Railway Labor Act as amended, 45 U. S. C., Section 152, Eleventh, BRT negotiated a Union Shop Agreement with the Railroad effective October 1, 1951, to date. On August 6, 1944, Smith was promoted to the status of conductor on the Railroad. Thereafter he performed dual service in the capacity of both trainman and conductor, but at the time this case was filed he was regularly assigned as conductor. The Order of Railway Conductors and Brakemen, joint plaintiff, hereinafter called ORC, an organization of national scope organized under the Railway Labor Act, did not have a union shop agreement with the Railroad, but since 1927 it had been the exclusive representative of all men employed by the Railroad of the craft and class of conductors, being their certified bargaining representative. Smith, under the collective bargaining contract between ORC and the Railroad, started to acquire seniority rights as a conductor at the time of his promotion on August 6, 1944. July 1, 1952, Smith ceased to maintain his membership in BRT, and was cited by BRT July 28, 1952, for noncompliance with the Union Shop Agreement. After the usual administrative proceedings decision was rendered against Smith June 4, 1956. It was determined that Smith had violated the Union Shop Agreement between BRT and the Railroad, and Smith was notified by the Railroad that his employment would be terminated June 14, 1956. Twenty other employees, some of them residing outside the Circuit, who have performed dual service with the Railroad as both trainmen and conductors, are subject to discharge because of noncompliance with the BRT Union Shop Agreement, nine of them having been so notified. The complaint prays for relief for Smith and for all other employees of the Railroad similarly situated belonging to the craft and class of conductors represented by ORC, and for permanent injunction.

The District Court granted the injunction. It held that the Union Shop Agreement between the Railroad and BRT, as interpreted and applied by the parties, is invalid and in violation of the Railway Labor Act as amended, particularly Section 2, Third, Fourth, Seventh, Ninth and Eleventh, to the extent that the agreement destroys the employment and seniority rights of Smith and others similarly situated as conductors and as members of the craft and class of conductors.[1] It held that the termination of the employment and seniority rights as conductors, of the plaintiff and others similarly situated, because of noncompliance with the Union Shop Agreement between the BRT and the Railroad, is unlawful under the Railway Labor Act as amended. It held that the controversy does not in-

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[1] RAILWAY LABOR ACT—45 U. S. C. § 152.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. . . . it shall be unlawful for any carrier to interfere in any way with the organization of its employees. . . .

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed. . . .

Eleventh. . . . any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees . . . shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: . . .

* * * * * *

(c) The requirement of membership in a labor organization . . . shall be satisfied . . . if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services: . . . Provided, . . . That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

volve or require the interpretation of the trainmen's Union Shop Agreement, inasmuch as there is no dispute between the parties to the agreement, the trainmen and the Railroad, as to its interpretation or application; that the National Railroad Adjustment Board therefore has no jurisdiction under Section 152, Ninth, and that plaintiff and others similarly situated are without an adequate administrative remedy. It also held that the ORC has no administrative remedy available under the Railway Labor Act, as the bargaining representative of the craft and class of conductors. It specifically held that, in so far as the discharges contemplated will terminate the employment and seniority as trainmen of plaintiff and others similarly situated, plaintiffs neither seek nor are entitled to relief with respect thereto. A permanent injunction was granted against the Railroad restraining it from terminating or taking any action to terminate the employment status and seniority of Smith and all other employees similarly situated as conductors because of their noncompliance with the Union Shop Agreement. A permanent injunction was issued against BRT restraining it from taking action to require termination by the Railroad of the employment and seniority as conductors of plaintiff and those similarly situated.

The Railroad did not appeal from the judgment and only the BRT, which had been allowed to intervene as party defendant, contests it in this court. It was agreed by the parties that under usual railroad procedures the employees had dual but separate job status and seniority, both as conductors and trainmen. It was stipulated that the ORC is the exclusive bargaining representative of the craft and class of conductors and that the BRT is the exclusive representative of the trainmen.

The controversy presented arose out of the fact that in 1952, after the Union Shop Agreement had been consummated between the Railroad and BRT, Smith and others

failed to pay dues to BRT. In accordance with the Union Shop Agreement, BRT then demanded that the employment status and seniority of these men be terminated. However, it demanded their discharge not only as trainmen but as conductors. The Railroad declares that it will terminate Smith's employment unless restrained and that this action will necessarily terminate Smith's employment and seniority as conductor as well as trainman.

The case thus presents a different problem from that of *Pennsylvania Railroad Company* v. *Rychlik*, 352 U. S. 480, and *Pigott* v. *Detroit, Toledo and Ironton Railroad Company*, 221 Fed. (2d) 736 (C. A. 6). These cases involved suits by employees who had been discharged for noncompliance with a union shop contract, where the employees held jobs only in the same craft or class represented by the union. The instant controversy involves employees who have separate job status and separate seniority rights as both conductors and trainmen. We have one union seeking to enforce its union shop contract, not only against its own members, but against members of another union which has exclusive jurisdiction over the conductor relationship.

BRT urges that the case is not within the jurisdiction of the courts but must be handled exclusively by the National Railroad Adjustment Board. We think the District Court decided this question correctly. Since the controversy arises under the laws of the United States, 45 U. S. C., Section 151 et seq, the case is within the jurisdiction of the District Court, 28 U. S. C., Sections 1332 and 1337, unless under the Railway Labor Act jurisdiction is vested in one of the administrative boards.

BRT, relying upon adjudications which involve the interpretation of collective bargaining agreements and upon cases which cover jurisdictional disputes between separate unions, urges that the decision upon this point was reversible error.

While in such controversies the National Railroad Adjustment Board has exclusive jurisdiction (*Slocum* v. *Delaware, Lackawanna & Western Railroad Company*, 339 U. S. 239), the decisions relating to the validity of railway labor agreements hold that the administrative remedy is not available. Here there is no question as to the interpretation of the Union Shop Agreement such as was present in the *Slocum* case, *supra*. The issue is not the meaning of the agreement which, in fact, is plain in its provisions and effect. The validity of the Union Shop Agreement as between BRT, the Railroad and the trainmen is not questioned. The issue is whether the BRT Union Shop Agreement is valid if interpreted and carried out by the Railroad and BRT so as to deprive Smith and others similarly situated of their employment as conductors. Decision of this issue depends upon the meaning of the statute and over such a question the federal courts have jurisdiction. In *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768, the Supreme Court held that when a contract between the union and the railroad produced an illegal result the courts, and not the National Railroad Adjustment Board, had jurisdiction.

As found by the District Court, the BRT is the exclusive bargaining representative of the craft and class of yard helpers, yard foremen, passenger and freight brakemen and flagmen, and switch tenders, collectively called "trainmen." While many employees represented by BRT have been employed as, worked as, and held seniority as conductors, the bargaining contract between BRT and the Railroad in no way purports to cover the craft and class of conductors. The construction sought by the Railroad and the BRT would enforce an unambiguous contract contrary to its plain purport, in violation of Section 2, Eleventh (a), of the Railway Labor Act. Cf. *W. P. Brown & Sons Lumber Company* v. *Louisville & Nashville Railroad Company*, 299 U. S. 393, 397-8. Since the issue is the validity and not the meaning of the contract, the court has

jurisdiction. *W. H. Mount* v. *The Grand International Brotherhood of Locomotive Engineers*, 226 Fed. (2d) 604, 607 (C. A. 6), certiorari denied 350 U. S. 967.

BRT'S further contention that this case is similar to a jurisdictional dispute and hence falls within the administrative procedures of the Railway Labor Act is likewise without merit. Here there is no "asserted overlapping of the interests of two crafts." *General Committee of Adjustment of the Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas Railroad Company*, 320 U. S. 323, 334. BRT and ORC are not asserting any claim to jurisdiction over the same jobs or working positions, nor is there the slightest dispute as to the organization representing the employees concerned. The question posed is whether, under the Railway Labor Act, which authorizes a union shop agreement between a labor organization and a railroad as to the "craft or class" represented by the labor organization, action can be taken cutting off seniority rights of employees in a different craft or class covered by a separate bargaining agreement and securing their discharge as to both types of employment. The administrative boards set up under the Act have no jurisdiction to determine such a question. *Steele* v. *Louisville & Nashville Railroad Company*, 323 U. S. 192, 204, 205. While the instant case is factually different from the *Steele* case, *supra*, the principle declared is controlling. The Supreme Court there stated "There is no question here of who is entitled to represent the craft, or who are the members of it. . . ." "Nor are there differences as to the interpretation of the contract. . . ." It was there held that the court had jurisdiction in cases under the Railway Labor Act which involve a violation of the Act and the validity of an agreement under the Act.

BRT also contends that the court should not have granted injunctive relief. Since the plaintiffs, as conceded by the Railroad, have no administrative remedy and the facts are

stipulated, the injunction should be sustained if the plaintiffs have a cause of action. As to the impropriety of the injunction much of BRT's argument is eliminated by the fact that the relief is prayed for only as to the rights of Smith and others as conductors and the court specifically limited the relief granted to such rights.

The fact that Smith and others in the same situation performing dual functions in separate crafts and classes of the Railroad failed to pay dues to BRT in 1952 and were cited for this noncompliance prior to the filing of this case clearly has no bearing upon the question whether they should be dismissed from employment as conductors in 1956, when they are members of the OBC, a labor organization national in scope organized under the Act, which has been and is the exclusive bargaining representative of the conductors.

Smith was employed as a conductor in 1944, eight years before he was cited by BRT and twelve years before his proposed discharge as a conductor. Under the OBC bargaining agreement Smith's rights as a conductor were established and accrued "from date of promotion." Rule 3, OBC agreement. Smith was assigned regularly as a conductor at the time of hearing but this, we think, is not decisive. The controlling consideration is that Smith's rights as a conductor and the rights of others similarly situated have been long established and are sought to be destroyed by the action of a labor union which has no bargaining rights affecting conductors. The question is whether these facts constitute a cause of action entitling plaintiffs to relief.

In urging that the injunction should have been denied BRT relies principally upon the proposition that under 45 U. S. C., Section 152, Eleventh (a), the carrier and the union are authorized to make agreements "requiring as a condition of continued employment," that within a stated period "all employees shall become members of the labor

organization representing their craft or class. . . ." The statutory phrase "as a condition of continued employment" is written into the Union Shop Agreement. BRT argues that if the present injunction is permitted to stand Smith and those similarly situated will have continued employment with the Railroad in spite of their noncompliance with the BRT Union Shop Agreement. Section 152, however, requires the union to be the representative "of the craft or class" of the employees who have designatd it. Nothing in the statute permits one union to represent employees of a craft or class for which the union is not designated as representative. The result contended for is that a union whose union shop contract has been violated may deprive Smith and others not only of their seniority rights and employment in that union but also of seniority rights and employment covered by a union contract which Smith and others have not violated. In fact, ORC declares that Smith is a member in good standing with its organization and ORC appears as coplaintiff in this action opposing Smith's discharge as a conductor. Reading the phrase "as a condition of continued employment" in the context of the entire statute we think Congress did not contemplate nor authorize the result sought by BRT. Since Smith seeks protection only as a conductor, it is sufficient that when this action was filed he had already joined ORC.

In the light of the whole enactment we think the phrase "continued employment" means continued employment in the craft or class covered by the BRT contract, that is, in the trainmen, and that the phrase has no reference to employment in a totally different craft or class such as that of the conductors even though the employer is the same.

If a union shop agreement is to have the effect contended for by BRT the statute should so provide. Such a purpose should not be read into the Railway Labor Act by implicaiton. If such a drastic penalty for noncompliance with the union shop agreement of one craft or class

is to be held valid and enforceable as to any and every other craft or class of railroad employees, the penalty should be based upon an express enactment of the Congress.

BRT's contention ignores the fact that BRT cannot legally negotiate with reference to conductors, and yet it has negotiated with the Railroad as to these conductors' rights. It ignores the further fact that ORC has the exclusive right to negotiate with reference to conductors and has not negotiated as to this controversy. It ignores the fact that ORC does not have a union shop contract with the Railroad and that Smith and others similarly situated have not violated the ORC contract. It asks that this court strike out material provisions from the statute and substitute material provisions not in the statute. As so construed the Union Shop Agreement is plainly invalid and the action contemplated thereunder by BRT and the Railroad is illegal. It follows that a valid cause of action is stated and the District Court rightly granted the injunction.

The judgment is affirmed.

APPENDIX C

Relevant Statutory Provisions

29 United States Code, 158(a)(3), (b)(2) (61 Stat. 140) provides as follows:

> § 158(a) It shall be an unfair labor practice for an employer— . . .
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States,

shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

§ 158(b) It shall be an unfair labor practice for a labor organization or its agents— . . .

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsec-

tion (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

45 United States Code 152, 153 (48 Stat. 1186, 1189, 64 Stat. 1238) provide in part as follows:

§ 152: "Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective baragining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any

labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such

manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employes to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however*, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in

scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

§ 153, First (i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.